

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOSEPH A. LEAL**

Claimant

VS.

**CITY WIDE TRANSPORTATION, INC.**

Respondent

AND

**MO. EMPLOYERS MUTUAL INS. CO.**

Insurance Carrier

Docket No. 1,029,415

**ORDER**

Respondent and its insurance carrier request review of the October 26, 2006 preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

**ISSUES**

This is a claim for a February 1, 2006 accident, which occurred in Missouri. The Administrative Law Judge (ALJ) determined claimant's accident was compensable under the Kansas Workers Compensation Act because claimant's principal place of employment was within Kansas. In other pertinent findings, the ALJ also found the employment contract was not made in Kansas as it was agreed the last act necessary for forming the contract took place in Missouri. The ALJ further found the claimant had proved by a preponderance of the credible evidence that the work-related accident aggravated a preexisting condition.

The respondent requests review of: (1) whether or not Kansas jurisdiction is proper; (2) whether the claimant's accidental injury arose out of and in the course of employment; and, (3) whether the ALJ exceeded his authority in granting benefits. The respondent argues claimant failed to meet his burden of proof that his principal place of employment was Kansas. Respondent argues the evidence establishes that the day before the accident claimant's bus route had been changed and his new route was exclusively in Missouri. Consequently, on the day the accident occurred claimant's principal place of employment had changed to Missouri.

Claimant argues the ALJ's Order should be affirmed. Claimant notes that his principal place of employment had been Kansas and although the accident occurred in Missouri, it happened while he was cleaning out the bus he had used driving the Kansas route.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

At the preliminary hearing, the respondent admitted the claimant had a work-related accident but denied that Kansas has jurisdiction nor that there was sufficient medical evidence to establish the proposed treatment was caused by the accident.

The facts are not seriously disputed. The claimant had been working as a bus driver approximately seven years for the respondent. Claimant was offered the job and accepted it in Missouri. His job duties consisted of picking up either senior citizens or children and taking them to the Jewish Community Center in Overland Park, Kansas. The claimant would then take the same people from the community center back to their homes. The claimant would then take the bus and park it in front of his home in Missouri. The majority of his route was performed in Kansas.

On January 31, 2006, the claimant was told by his supervisor, Mr. Frankenfield, that he would no longer be driving the Kansas route and was being placed on a route up north on the Missouri side. The claimant was to start his new route on February 1, 2006, and the route would be exclusively in Missouri. The last day claimant worked on the Kansas route was January 31, 2006.

On February 1, 2006, the claimant was in the process of cleaning out the bus he had used for the Kansas route so that it would be ready for a different driver to take over that route. After cleaning the bus and taking out his personal items claimant was to take the bus to respondent's Missouri office and get a different bus or van for his new Missouri route. As he was cleaning the bus, the claimant slipped on the top of the bus stairwell and fell on his knee. He experienced extreme pain and sought medical treatment at Truman Medical Center.

The accident occurred at claimant's home. He testified:

Q. And when you woke up the next morning and got ready to get out on your bus, you were in Missouri; correct?

A. Yes, sir, at my house.

Q. And that's where you started your route every day?

A. Yes, sir.

Q. And you were going to take that bus into the employer's business operations there in Missouri; correct?

A. Yes, sir.

Q. And you were going to get another bus and start on a route up north in Missouri; correct?

A. I'm not sure what type of vehicle. I don't know if it was a bus or a van or if I was just going to train with somebody else. I -- I don't know.

Q. You have filed a Missouri workers' compensation claim as well; correct?

A. Yes, sir.<sup>1</sup>

The initial issue to address is whether there is jurisdiction under the Kansas Workers Compensation Act.

It is undisputed claimant's accidental injury occurred in Missouri. The Kansas Workers Compensation Act confers jurisdiction in some cases where the injury is sustained outside the state. The two provisions that confer Kansas jurisdiction are (1) if the principal place of employment is within the state, or (2) the contract of employment was made within the state, unless the contract specifically provides otherwise.<sup>2</sup>

K.S.A. 44-506 provides:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: *Provided, however*, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

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<sup>1</sup> P.H. Trans. at 31-32.

<sup>2</sup> *Abbey v. Cleveland Inspection Services, Inc.*, 30 Kan. App. 2d 114, 41 P.3d 297 (2002).

Because claimant's accident occurred in Missouri and his contract of employment was also made in Missouri, for the Kansas Workers Compensation Act to be applicable the claimant must establish that his principal place of employment was within Kansas.<sup>3</sup>

Claimant argues that his principal place of business was in Kansas. This Board member acknowledges that for the majority of his employment that was true. Had claimant's bus route continued in Kansas, there is no doubt the Kansas Workers Compensation Act would apply to this situation. However, the evidence is equally clear that claimant's last day on the Kansas route was January 31, 2006. Claimant was then reassigned to a route driving exclusively in Missouri. On February 1, 2006, as claimant started his work day by cleaning out the bus, he was in Missouri and the accident occurred in Missouri.

The ALJ concluded claimant had not yet started his new route and cleaning the bus used on the Kansas route was the final act of his Kansas route and accordingly still part of the employment that had principally occurred in Kansas. This Board member disagrees.

The last day claimant performed work that was principally in Kansas was January 31, 2006. After that date his route was exclusively in Missouri. The fact that the accident occurred as he was performing job duties before actually starting to drive his new route is not controlling. This situation is no different than if claimant had started work for a new employer, in such a case the analysis is based on what his new job duties required and where his principal place of employment was on the date of the accident.<sup>4</sup> Again, the evidence established that on the date of accident claimant's principal place of employment and job duties would exclusively be performed in Missouri.

Under the facts of this case claimant's principal place of employment had changed to Missouri on the date of the accident. As claimant has failed to establish there is jurisdiction under the Kansas Workers Compensation Act, claimant's request for benefits should be denied.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>5</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>6</sup>

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<sup>3</sup> *Knelson v. Meadowlanders, Inc.*, 11 Kan. App. 2d 696, 732 P.2d 808 (1987).

<sup>4</sup> *Speer v. Sammons Trucking*, 35 Kan. App. 2d 132, 128 P.3d 984 (2006).

<sup>5</sup> K.S.A. 44-534a.

<sup>6</sup> K.S.A. 2005 Supp. 44-555c(k).

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated October 26, 2006, is reversed and claimant's request for benefits is denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January 2007.

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BOARD MEMBER

c: Keith V. Yarwood, Attorney for Claimant  
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge